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May 9, 2005

Chairman Liane Randolph
Commissioner Sheridan Downey
Commissioner Philip Blair
Commissioner A. Eugene Huguenin
Commissioner Ray Remy
Fair Political Practices Commission
428 J Street, Suite 650
Sacramento, CA 95814

Re: Comments of the California Republican Party and the California Democratic Party on Pre-Notice Discussion of Proposed Regulation 18530.3 – Agenda Item # 9

Dear Chairman and Commissioners:

We submit this joint comment on the “pre-noticed” regulation 18530.3 on behalf of the California Republican Party and the California Democratic Party. We urge the Commission not to pre-notice this proposed regulation until the serious issue of Federal preemption has been considered and addressed by Commission staff.

The California Republican Party and the California Democratic Party have worked with Commission staff for nearly a year on issues related to this subject. During that period, representatives of the two political parties have advised Commission staff that regulations in the area of Levin money would be preempted by the Federal Election Campaign Act (FECA). However, the Commission staff has not dealt with this essential issue of preemption and, more importantly, allocation of Federally-regulated contributions and expenditures. The staff memorandum on the proposed regulation 18503.3 does not even address the Federal preemption concern raised repeatedly by the political parties.

Title 2, USCA, Section 453, provides that the FECA “supersede[s] and preempt[s] any provision of State law with respect to election to Federal office.” The Federal Election Commission (FEC) has issued a variety of advisory opinions interpreting Section 453’s preemption of such state regulations. The FEC has stated that “[b]y their very nature, the allocable expenses of a State party committee, as distinguished from

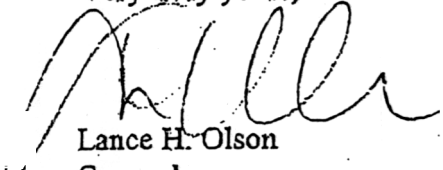
funds raised for and spent solely for the support of a non-Federal candidate, are intertwined with, and can affect, Federal election activity." (FEC Advisory Opinion, 2000-24.) Therefore, the FEC has concluded that state efforts to regulate political party committees in this way are preempted by Federal law. (*Id.*)

Federal preemption of the staff proposed regulation is even clearer since the Bipartisan Campaign Reform Act of 2002 (BCRA) went into effect. BCRA "federalized" some of the activities formerly believed by many, including the undersigned, to be non-Federal activities or the state share of joint Federal/state election activities. BCRA defined "federal election activity" to include voter registration within 120 days of a Federal election, voter identification, get-out-the-vote activity, generic campaign activity and public communications that refer to a clearly identified candidate for Federal office, regardless of whether a state or local candidate or measure is also mentioned or identified.

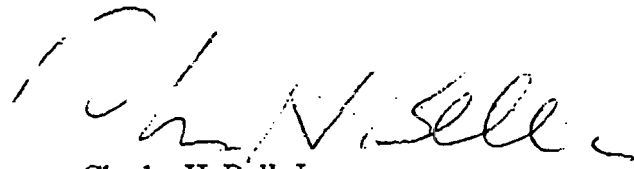
The California Republican Party and the California Democratic Party strongly urge the Commission to seek advice from the FEC on whether this proposal is preempted by Federal law. If the Commission fails to seek such advice, the undersigned are prepared to address this issue directly with the FEC.

In addition to preemption issues, our clients have serious and important concerns regarding the specific proposals contained in the proposed regulations. If the proposed regulation survives a thorough analysis on the Federal preemption issue, the California Republican Party and the California Democratic Party are prepared to raise those substantive issues and would hope the Commission would be receptive to their concerns on the particular issues.

Very truly yours,



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cc Luisa Menchaca, General Counsel
Larry Woodlock, Senior Commission Counsel

EVP